

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 15, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JERRIANNE D.,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:17-CV-3121-FVS

ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment. ECF Nos. 13 and 14. This matter was submitted for consideration without oral argument. The plaintiff is represented by Attorney D. James Tree. The defendant is represented by Special Assistant United States Attorney Ryan Ta Lu. The Court has reviewed the administrative record, the parties' completed briefing, and is fully informed. For the reasons discussed below, the court

ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT - 1

1 **GRANTS** Plaintiff's Motion for Summary Judgment, ECF No. 13, and **DENIES**
2 Defendant's Motion for Summary Judgment, ECF No. 14.

3 **JURISDICTION**

4 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

5 **STANDARD OF REVIEW**

6 A district court's review of a final decision of the Commissioner of Social
7 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
8 limited; the Commissioner's decision will be disturbed "only if it is not supported
9 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
10 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
11 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
12 (quotation and citation omitted). Stated differently, substantial evidence equates to
13 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
14 citation omitted). In determining whether the standard has been satisfied, a
15 reviewing court must consider the entire record as a whole rather than searching
16 for supporting evidence in isolation. *Id.*

17 In reviewing a denial of benefits, a district court may not substitute its
18 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
19 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one
20 rational interpretation, [the court] must uphold the ALJ's findings if they are
21 supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674

1 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
2 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
3 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
4 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
5 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
6 *Sanders*, 556 U.S. 396, 409-10 (2009).

7 **FIVE-STEP EVALUATION PROCESS**

8 A claimant must satisfy two conditions to be considered “disabled” within
9 the meaning of the Social Security Act. First, the claimant must be “unable to
10 engage in any substantial gainful activity by reason of any medically determinable
11 physical or mental impairment which can be expected to result in death or which
12 has lasted or can be expected to last for a continuous period of not less than twelve
13 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be
14 “of such severity that he is not only unable to do his previous work[,] but cannot,
15 considering his age, education, and work experience, engage in any other kind of
16 substantial gainful work which exists in the national economy.” 42 U.S.C. §
17 1382c(a)(3)(B).

18 The Commissioner has established a five-step sequential analysis to
19 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §
20 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s work
21 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in “substantial

1 gainful activity,” the Commissioner must find that the claimant is not disabled. 20
2 C.F.R. § 416.920(b).

3 If the claimant is not engaged in substantial gainful activity, the analysis
4 proceeds to step two. At this step, the Commissioner considers the severity of the
5 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
6 “any impairment or combination of impairments which significantly limits [his or
7 her] physical or mental ability to do basic work activities,” the analysis proceeds to
8 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy
9 this severity threshold, however, the Commissioner must find that the claimant is
10 not disabled. 20 C.F.R. § 416.920(c).

11 At step three, the Commissioner compares the claimant’s impairment to
12 severe impairments recognized by the Commissioner to be so severe as to preclude
13 a person from engaging in substantial gainful activity. 20 C.F.R. §
14 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
15 enumerated impairments, the Commissioner must find the claimant disabled and
16 award benefits. 20 C.F.R. § 416.920(d).

17 If the severity of the claimant’s impairment does not meet or exceed the
18 severity of the enumerated impairments, the Commissioner must pause to assess
19 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),
20 defined generally as the claimant’s ability to perform physical and mental work
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activities on a sustained basis despite his or her limitations, 20 C.F.R. § 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

At step four, the Commissioner considers whether, in view of the claimant's RFC, the claimant is capable of performing work that he or she has performed in the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of performing such work, the analysis proceeds to step five.

At step five, the Commissioner considers whether, in view of the claimant's RFC, the claimant is capable of performing other work in the national economy. 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational factors such as the claimant's age, education and past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work, analysis concludes with a finding that the claimant is disabled and is therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such work "exists in significant

1 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*,
2 700 F.3d 386, 389 (9th Cir. 2012).

3 **ALJ’S FINDINGS**

4 Jerrienne D.¹ (Plaintiff) applied for supplemental security income and
5 disability insurance benefits on January 17, 2014, alleging an onset date of July 10,
6 2013. Tr. 179-80. Benefits were denied initially, Tr. 112-15, and upon
7 reconsideration. Tr. 121-28. Plaintiff appeared for a hearing before an
8 administrative law judge (ALJ) on November 20, 2015. Tr. 34-85. On January 21,
9 2016, the ALJ denied Plaintiff’s claim. Tr. 15-33.

10 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
11 activity since January 17, 2014, the application date. Tr. 20. At step two, the ALJ
12 found that Plaintiff has the following severe impairments: colitis, asthma,
13 depressive disorder, anxiety disorder, and personality disorder. Tr. 20. At step
14 three, the ALJ found that Plaintiff does not have an impairment or combination of
15 impairments that meets or medically equals the severity of a listed impairment. Tr.
16 21. The ALJ then concluded that Plaintiff has the RFC

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19 ¹ In the interest of protecting Plaintiff’s privacy, the Court will use Plaintiff’s first
20 name and last initial, and, subsequently, Plaintiff’s first name only, throughout this
21 decision.

1 to perform medium work as defined in 20 CFR 416.967(c) except she
2 can lift and or carry 50 pounds occasionally and 25 pounds frequently;
3 she can stand and or walk about 6 hours a day with normal breaks in an
4 8-hour workday; she can sit about 6 hours a day with normal breaks in
5 an 8-hour workday; she is limited to occasional exposure to extreme
6 cold, wetness, atmospheric conditions, and hazards; she is able to
7 remember, understand, and carry out instructions and tasks generally
8 required by occupations with an SVP of 1-2; she is able to make
9 adjustment to work setting changes with an SVP of 1-2; she is limited
10 to infrequent superficial interaction with the general public; she is
11 limited to occasional interaction with coworkers or supervisors; job
12 tasks should be able to be completed without the assistance of others
13 but occasional assistance would be tolerated; and work should be
14 performed in the presence of 25 or less people.

15 Tr. 22. At step four, the ALJ found that Plaintiff is unable to perform any past
16 relevant work. Tr. 27. At step five, the ALJ found that considering Plaintiff's age,
17 education, work experience, and RFC, there are other jobs that exist in significant
18 numbers in the national economy that Plaintiff can perform, including: assembler
19 production; cleaner housekeeping; and packing line worker. Tr. 28. The ALJ
20 concluded Plaintiff has not been under a disability, as defined in the Social
21 Security Act, since January 17, 2014, the date the application was filed. Tr. 29.

On May 11, 2017, the Appeals Council denied review, Tr. 1-7, making the
ALJ's decision the Commissioner's final decision for purposes of judicial review.
See 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

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ISSUES

Plaintiff seeks judicial review of the Commissioner's final decision denying her supplemental security income benefits under Title XVI of the Social Security Act. ECF No. 13. Plaintiff raises the following issues for this Court's review:

1. Whether the ALJ improperly considered the medical opinion evidence;
2. Whether the ALJ improperly discredited Plaintiff's symptom claims; and
3. Whether the Appeals Council erred by failing to consider new evidence.

DISCUSSION

A. Medical Opinions

There are three types of physicians: "(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant [but who review the claimant's file] (nonexamining [or reviewing] physicians)." *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th Cir.2001)(citations omitted). Generally, a treating physician's opinion carries more weight than an examining physician's, and an examining physician's opinion carries more weight than a reviewing physician's. *Id.* If a treating or examining physician's opinion is uncontradicted, the ALJ may reject it only by offering "clear and convincing reasons that are supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.2005). Conversely, "[i]f a treating or examining doctor's opinion is contradicted by another doctor's opinion, an ALJ may only reject it by

1 providing specific and legitimate reasons that are supported by substantial
2 evidence.” *Id.* (citing *Lester*, 81 F.3d at 830–831). “However, the ALJ need not
3 accept the opinion of any physician, including a treating physician, if that opinion
4 is brief, conclusory and inadequately supported by clinical findings.” *Bray v.*
5 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (quotation and
6 citation omitted). Plaintiff argues the ALJ erroneously considered the opinions of
7 examining psychiatrist C. Donald Williams, M.D., and treating physician John
8 Lyzanchuk, D.O. ECF No. 13 at 4-13.

9 *1. C. Donald Williams, M.D.*

10 In May 2014, Dr. Williams examined Plaintiff and opined that Plaintiff had
11 “at most mild” limitations in her ability to understand and remember short and
12 simple instructions, and detailed instructions; no limitation in her ability to carry
13 out very short and simple instructions; mild limitations in her ability to ask simple
14 questions or request assistance; and mild limitations in her ability to make simple
15 work-related decisions. Tr. 388-89. Dr. Williams additionally opined that Plaintiff
16 is markedly limited in her ability to: carry out detailed instructions; maintain
17 attention and concentration for extended periods; perform activities within a
18 schedule, maintain regular attendance, and be punctual within customary
19 tolerances; sustain an ordinary routine without special supervision; complete a
20 normal workday and workweek without interruptions from psychologically-based

1 symptoms; and interact with the general public. Tr. 389. Finally, the ALJ found
2 Plaintiff

3 has demonstrated an inability to work in coordination with others and
4 in proximity to others without being distracted by them. [S]he has been
5 fired from multiple jobs because of conflicts with coworkers and
6 supervisors. . . . She is not able to respond appropriately to criticism
7 from supervisors . . . She displays behavioral extremes and is unable to
8 get along with coworkers. She does not maintain socially appropriate
9 behavior. Historically she has not been able to adapt appropriately to
10 changes in the work setting. She appears able to use public
11 transportation and travel to unfamiliar places. She is not able to set
12 realistic goals and make plans independently.

Tr. 389. The ALJ gave Dr. Williams' opinion some weight overall. Tr. 29-30.

9 Because Dr. Williams' opinion was contradicted by Beth Fitterer, Ph.D., Tr. 93-94,
10 the ALJ was required to provide specific and legitimate reasons for rejecting
11 portions of Dr. Williams' opinion. *Bayliss*, 427 F.3d at 1216.

12 Here, the ALJ gave "little weight" to Dr. Williams' "assessed marked
13 limitations in maintaining concentration, regular attendance, and completing a
14 normal workday because it is contrary to the medical evidence." Tr. 26. However,
15 as noted by the ALJ, "[m]ental status exams are generally within normal limits."
16 Tr. 26. It was proper for the ALJ to consider inconsistency between Dr. Williams'
17 opinion that Plaintiff was markedly limited in her ability to maintain concentration
18 and complete a normal workday; and benign findings in the record as a whole. *See*
19 *Orn*, 495 F.3d at 631. Moreover, the ALJ found Plaintiff's "activities demonstrate
20 an ability to understand, remember and carry out simple tasks," and noted that
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1 Plaintiff “maintained a regular schedule and routine in caring for her daughter.”
2 Tr. 26. In support of this finding, the ALJ cited activities, including Plaintiff’s
3 ability to be independent in her personal care, serve as primary caretaker for her
4 daughter, do chores, use public transportation, and regularly attend medical visits.
5 Tr. 26, 58, 62-70, 210-13, 388. The ALJ may discount Dr. Williams’ opinion
6 regarding Plaintiff’s ability to maintain a regular schedule and routine because it is
7 inconsistent with Plaintiff’s reported functioning. *See Morgan v. Comm’r of Soc.*
8 *Sec. Admin.*, 169 F.3d 595, 601-02 (9th Cir. 1999).

9 However, as argued by Plaintiff, the ALJ failed to consider Dr. Williams’
10 assessment that Plaintiff is not able to respond appropriately to criticism by
11 supervisors; is unable to get along with coworkers; and does not maintain socially
12 appropriate behavior. ECF No. 13 at 11-12 (citing Tr. 26, 389). In addition, the
13 ALJ failed to consider Dr. Williams’ opinion that Plaintiff is markedly limited in
14 her ability to interact with the general public; and is not able to set realistic goals
15 and make plans independently. *See* Tr. 26, 389. Defendant argues “a reading of
16 the ALJ’s decision shows that he intended to reject Dr. Williams’ opinion of social
17 limitations, even if the decision does not explicitly state so.” ECF No. 14 at 19-20.
18 In support of this argument, the Defendant cites the ALJ’s single “mention” of Dr.
19 Williams’ opined limitations regarding Plaintiff’s inability to work “in
20 coordination with others.” Tr. 26.

1 Defendant is correct that the Court must “uphold [the ALJ’s decision] if the
2 agency’s path may reasonably be discerned.” ECF No. 14 at 20 (citing *Molina*,
3 674 F.3d at 1121). However, “[a]lthough the ALJ’s analysis need not be extensive,
4 the ALJ must provide some reasoning in order for us to meaningfully determine
5 whether the ALJ’s conclusions were supported by substantial evidence.” *Brown-*
6 *Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015); *see also Vincent v. Heckler*,
7 739 F.2d 1393, 1394-95 (9th Cir. 1984) (ALJ need not discuss all evidence
8 presented, but must explain why significant probative evidence has been rejected).
9 Here, the ALJ failed to even mention, much less offer specific and legitimate
10 reasons, for discounting Dr. Williams’ opinion concerning Plaintiff’s ability to
11 interact with coworkers, supervisors, and the general public; maintain socially
12 appropriate behavior; set realistic goals; and plan independently. Thus, the ALJ
13 erred in failing to evaluate this probative evidence, and further, this error cannot be
14 considered harmless, because while the ALJ did include some limitations on
15 Plaintiff’s ability to interact with the general public, supervisors, and coworkers,
16 the Court is unable to discern whether the severe limitations opined by Dr.
17 Williams were properly accounted for in the assessed RFC and resulting
18 hypothetical. *See Stubbs–Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir.2008)
19 (finding harmless error when the ALJ’s hypothetical properly incorporated
20 limitations consistent with those identified in medical testimony); *see also Stout v.*
21 *Comm’r Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006) (error harmless

1 where it is non-prejudicial to claimant or irrelevant to ALJ's ultimate disability
2 conclusion). On remand, the ALJ should reevaluate Dr. Williams' opinion,
3 including the opined limitations on ability to interact with coworkers, supervisors,
4 and the general public; maintain socially appropriate behavior; set realistic goals;
5 and plan independently.

6 *2. John Lyzanchuk, D.O.*

7 As noted by the ALJ, the record includes multiple opinions from treating
8 physician Dr. Lyzanchuk that "range from undetermined if permanent impairment
9 and permanent impairment to severely limited to capable of light exertion
10 activities." Tr. 26. Specifically, during the relevant adjudicatory period, Dr.
11 Lyzanchuk opined as follows: in July 2013 Plaintiff was restricted to light duty for
12 one week (Tr. 400); in July 2013 he opined that Plaintiff was severely limited,
13 defined as unable to lift at least 2 pounds or unable to walk, for an "undetermined"
14 period of time (Tr. 403); in October 2013 he opined that Plaintiff was able to do
15 light work for an "undetermined" period of time, but also checked a box stating
16 Plaintiff was unable to participate in work activity (Tr. 406-07); in January 2014 he
17 opined that Plaintiff was able to do light work on a permanent basis, and was able
18 to participate in work activity 11-20 hours per week (Tr. 412-13); in May 2014 he
19 opined that Plaintiff was able to do light work on a permanent basis, but also
20 checked a box indicating she was unable to participate in work activity (Tr. 416-
21 17); and in April 2015 he opined that Plaintiff was unable to participate in work

1 activity, and did not opine as to lifting and carrying restrictions (Tr. 421). Dr.
2 Lyzanchuk consistently noted that Plaintiff needed to be close to the restroom. Tr.
3 26, 407, 413, 417, 421. The ALJ considered Dr. Lyzanchuk's opinions together,
4 and gave them little weight. Tr. 26. Because Dr. Lyzanchuk's opinions were
5 contradicted by Gordon Hale, M.D., Tr. 105-06, the ALJ was required to provide
6 specific and legitimate reasons for rejecting Dr. Lyzanchuk's opinion. *Bayliss*, 427
7 F.3d at 1216.

8 Here, the ALJ found that Dr. Lyzanchuk "provides no objective medical
9 evidence in support of any of the opinions, which undercuts the reliability of his
10 opinions. In addition, his opinions of severe/permanent totally disabling
11 limitations are inconsistent with the record. Despite [Plaintiff's] reports of chronic
12 diarrhea and abdominal symptoms, [Plaintiff] has minimal objective findings in the
13 record." Tr. 26. "[A]n ALJ may discredit treating physicians' opinions that are
14 conclusory, brief, and unsupported by the record as a whole, or by objective
15 medical findings." *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195
16 (9th Cir. 2004).

17 First, Plaintiff contends that Dr. Lyzanchuk's treatment notes "provided the
18 objective evaluations and testing as the basis for his opinion." ECF No. 13 at 7-9
19 (citing Tr. 311, 512-14, 604, 612, 616). However, while Plaintiff cites evidence
20 that objective testing such as imaging, biopsy, and lab tests were performed during
21 the adjudicatory period, she fails to offer evidence that these test results were

1 “provided” by Dr. Lyzanchuk in support of his opinions. In fact, Dr. Lyzanchuk’s
2 opinions consistently highlighted “specific issues that need further evaluation or
3 assessment.” Tr. 404, 408, 414, 418, 422.

4 Second, Plaintiff argues this reasoning “fails to accurately reflect the
5 record,” and cites “objective evidence” including: anal fissure diagnosis, acute
6 ascending colitis, mild to moderate ascites in the pelvis, diverticula, positive C
7 difficile, blood in her urine, tender abdomen, and significant weight loss. ECF No.
8 13 at 9 (citing Tr. 300, 310, 351, 357, 501, 503, 511, 551). However, as noted in
9 the decision, the ALJ noted minimal and largely benign objective findings despite
10 Plaintiff’s ongoing complaints of abdominal pain and diarrhea, including but not
11 limited to: an April 2013 CT scan that showed no clear signs of ulcerative colitis,
12 Crohn’s disease, or diverticulitis; an October 2014 CT of abdomen/pelvis, images
13 of the colon, and stool markers that did not confirm inflammatory diarrhea and
14 found no evidence of celiac disease; August 2015 mucosal biopsies in the colon
15 that showed no inflammatory changes to suggest colitis; normal gallbladder
16 ultrasound and normal Lipase in July 2013; and normal labs in August 2013. Tr.
17 23-24 (citing Tr. 356, 366, 376, 543, 555).

18 Based on the foregoing, and regardless of evidence that could be interpreted
19 more favorably to Plaintiff, it was reasonable for the ALJ to find Dr. Lyzanchuk’s
20 opinions were inconsistent with the overall medical evidence of record. *See Burch*,
21 400 F.3d at 679 (where evidence is susceptible to more than one interpretation, the

1 ALJ's conclusion must be upheld). These were specific and legitimate reasons for
2 the ALJ to give Dr. Lyzanchuk's opinions little weight. Regardless, in light of the
3 need to reconsider Dr. Williams' opinion, the ALJ should reexamine all of the
4 medical evidence upon remand, including medical opinion evidence deemed
5 relevant.

6 **B. Plaintiff's Symptom Claims** ²

7 An ALJ engages in a two-step analysis to determine whether a claimant's
8 testimony regarding subjective pain or symptoms is credible. "First, the ALJ must
9 determine whether there is objective medical evidence of an underlying
10 impairment which could reasonably be expected to produce the pain or other
11 symptoms alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).

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14 ² Plaintiff raises a separate issue in her opening brief, namely, that "although the
15 ALJ found [Plaintiff's] colitis severe (Tr. 20), he harmfully failed to properly
16 consider her associated limitations in assessing the RFC." ECF No. 13 at 14.
17 However, after reviewing Plaintiff's argument, the Court agrees with Defendant
18 that "this issue ultimately challenges the ALJ's evaluation of [Plaintiff's] symptom
19 complaints." ECF No. 14 at 2-3 n.1. As discussed herein, in light of the need to
20 reconsider the medical opinion evidence, the ALJ should also reevaluate Plaintiff's
21 symptom claims on remand.

1 “The claimant is not required to show that her impairment could reasonably be
2 expected to cause the severity of the symptom she has alleged; she need only show
3 that it could reasonably have caused some degree of the symptom.” *Vasquez v.*
4 *Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

5 Second, “[i]f the claimant meets the first test and there is no evidence of
6 malingered, the ALJ can only reject the claimant’s testimony about the severity of
7 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
8 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal
9 citations and quotations omitted). “General findings are insufficient; rather, the
10 ALJ must identify what testimony is not credible and what evidence undermines
11 the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th
12 Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ
13 must make a credibility determination with findings sufficiently specific to permit
14 the court to conclude that the ALJ did not arbitrarily discredit claimant’s
15 testimony.”). “The clear and convincing [evidence] standard is the most
16 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,
17 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
18 924 (9th Cir. 2002)).

19 In making an adverse credibility determination, the ALJ may consider, *inter*
20 *alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the
21 claimant’s testimony or between her testimony and her conduct; (3) the claimant’s

1 daily living activities; (4) the claimant's work record; and (5) testimony from
2 physicians or third parties concerning the nature, severity, and effect of the
3 claimant's condition. *Thomas*, 278 F.3d at 958-59.

4 Here, the ALJ found Plaintiff's medically determinable impairments could
5 reasonably be expected to cause some of the alleged symptoms; however,
6 Plaintiff's "statements concerning the intensity, persistence and limiting effects of
7 these symptoms are not entirely credible" for several reasons. Tr. 23.

8 First, the ALJ found Plaintiff's "alleged physical complaints and related
9 limitations exceed the objective medical evidence of record." Tr. 23. An ALJ may
10 not discredit a claimant's pain testimony and deny benefits solely because the
11 degree of pain alleged is not supported by objective medical evidence. *Rollins v.*
12 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341,
13 346-47 (9th Cir. 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989).

14 However, the medical evidence is a relevant factor in determining the severity of a
15 claimant's pain and its disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §
16 404.1529(c)(2). Plaintiff argues the ALJ improperly found the objective evidence
17 of record did not support her subjective testimony because she "had ample
18 evidence of ongoing impairments," including "objective" findings of strongly
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1 guaiac positive stool samples, anal fissure, blood in urine, and tender abdomen.³
2 ECF No. 13 at 15-16. However, the ALJ set out, in detail, the medical evidence
3 contradicting Plaintiff's claims of disabling physical limitations, including: an
4 April 2013 CT scan that showed no clear signs of ulcerative colitis, Crohn's
5 disease, or diverticulitis; October 2014 CT of abdomen/pelvis, images of the colon,
6 and stool markers that did not confirm inflammatory diarrhea and found no
7 evidence of celiac disease; August 2015 mucosal biopsies in the colon that showed
8 no inflammatory changes to suggest colitis; normal gallbladder ultrasound and
9 normal Lipase in July 2013; normal labs in August 2013; and physical exams

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13 ³ Plaintiff additionally contends that the ALJ improperly rejected Plaintiff's
14 testimony that she could have diarrhea up to 13 per day because "[t]here are no
15 reports by [Plaintiff] to providers of frequency of diarrhea of 13 times a day." ECF
16 No. 13 at 15-16 (citing Tr. 23). The Court agrees. The record includes Plaintiff's
17 reports that she had diarrhea 14 times per day, and up to 20 bowel movements per
18 day, during the relevant adjudicatory period. Tr. 499, 613. However, any error by
19 the ALJ in considering this evidence would be harmless because the ALJ offered
20 substantial evidence in support of rejecting Plaintiff's symptom claims. Moreover,
21 as discussed above, this evidence will be reconsidered on remand.

1 consistently showed normal strength, reflexes, and sensation in the upper and
2 lower extremities. Tr. 23-24 (citing Tr. 356, 366, 376, 543, 555, 571-72).

3 Moreover, in contradiction to Plaintiff's claims of disabling mental
4 limitations, the ALJ noted that mental status examinations were mostly within
5 normal limits. Tr. 26 (citing Tr. 364, 433, 501, 571-72). For all of these reasons,
6 regardless of evidence that could be interpreted more favorably to the Plaintiff, the
7 ALJ properly relied on evidence supporting his finding that the degree of
8 impairment alleged by Plaintiff is not supported by the weight of the medical
9 evidence. Tr. 23-25; *see Thomas*, 278 F.3d at 958-59 ("If the ALJ finds that the
10 claimant's testimony as to the severity of her pain and impairments is unreliable,
11 the ALJ must make a credibility determination . . . [t]he ALJ may consider
12 testimony from physicians and third parties concerning the nature, severity and
13 effect of the symptoms of which the claimant complains."); *Burch*, 400 F.3d at 679
14 ("[W]here evidence is susceptible to more than one rational interpretation, it is the
15 [Commissioner's] conclusion that must be upheld."). The lack of corroboration of
16 Plaintiff's claimed limitations by the objective medical evidence, was a clear and
17 convincing reason, supported by substantial evidence, for the ALJ to discount
18 Plaintiff's symptom claims.

19 Second, the ALJ found Plaintiff's activities of daily living "demonstrate that
20 she is more functional than alleged." Tr. 25. Plaintiff correctly notes that a
21 claimant need not be utterly incapacitated in order to be eligible for benefits. ECF

1 No. 13 at 16 (citing *Fair*, 885 F.2d at 603); *see also Orn*, 495 F.3d at 639 (“the
2 mere fact that a plaintiff has carried on certain activities . . . does not in any way
3 detract from her credibility as to her overall disability.”). Regardless, even where
4 daily activities “suggest some difficulty functioning, they may be grounds for
5 discrediting the [Plaintiff’s] testimony to the extent that they contradict claims of a
6 totally debilitating impairment.” *Molina*, 674 F.3d at 1113. Plaintiff generally
7 argues that the ALJ “failed to specify what about [Plaintiff’s] minor activities is
8 discrediting. Being able to do some personal care and household chores also does
9 not contradict her testimony of limitations.” ECF No. 13 at 17. However, the ALJ
10 specifically noted that Plaintiff testified that she does not have a driver’s license
11 because people scare her; she does not like crowds and has trouble trusting and
12 communicating with people; and she does not like being alone even though she
13 does not like people. Tr. 25, 59, 74-78. Next, the ALJ cited evidence that
14 indicates Plaintiff is more functional than she alleged. Tr. 25. For example,
15 Plaintiff testified that she is “the primary caretaker for her daughter and
16 responsible for her care” including picking out her clothes for the week, walking
17 her to the bus stop, doing homework with her, watching movies, and doing art. Tr.
18 25, 63-71. Plaintiff’s ability to care for children without help may undermine
19 claims of totally disabling symptoms. *See Rollins*, 261 F.3d at 857. The ALJ
20 further noted that in March 2014, Plaintiff reported no problems with personal
21 care, caring for her daughter including preparing meals, doing dishes and laundry,

1 using public transportation including going out alone, and shopping in stores. Tr.
2 25, 210-13. And in May 2014, Plaintiff reported to Dr. Williams that she prepared
3 three meals a day for her daughter, did laundry, vacuumed, managed her own
4 funds, and was able to complete activities of daily living in a timely manner. Tr.
5 25, 388. As noted by Defendant, it was reasonable for the ALJ to infer that
6 “Plaintiff’s ability to take public transportation and shop in stores undermined her
7 allegations of anxiety so severe that she had debilitating problems being around
8 people.” ECF No. 14 at 13 (citing Tr. 25, 74-75); *see Tommasetti v. Astrue*, 533
9 F.3d 1035, 1040 (9th Cir. 2008) (ALJ may draw inferences logically flowing from
10 evidence). Moreover, regardless of evidence that could be considered more
11 favorable to Plaintiff, the daily activities outlined above were reasonably
12 considered by the ALJ as inconsistent with Plaintiff’s complaints of *entirely*
13 disabling limitations. *See Burch*, 400 F.3d at 679 (where evidence is susceptible to
14 more than one interpretation, the ALJ’s conclusion must be upheld); *see also*
15 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995) (“[t]he ALJ is responsible
16 for determining credibility”). This was a clear and convincing reason to discredit
17 Plaintiff’s symptom claims.

18 Third, the ALJ found Plaintiff’s “lack of mental health treatment raises
19 questions [as] to her allegations related to the severity of her mental health
20 symptoms.” Tr. 24. Unexplained, or inadequately explained, failure to seek
21 treatment or follow a prescribed course of treatment may be the basis for an

1 adverse credibility finding unless there is a showing of a good reason for the
2 failure. *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007). However, an ALJ “will
3 not find an individual’s symptoms inconsistent with the evidence in the record on
4 this basis without considering possible reasons he or she may not comply with
5 treatment or seek treatment consistent with the degree of his or her complaints.”
6 Social Security Ruling (“SSR”) 16-3p at *8-*9 (March 16, 2016), *available at*
7 2016 WL 1119029.

8 Here, the ALJ noted that Plaintiff “denied” counseling since 1994 when she
9 lost her father; had recently started treatment at the time of the hearing “but was
10 only at the introduction stage of treatment”; was not on any medication for her
11 mental health symptoms; and despite alleging disabling mental health symptoms of
12 depression and anxiety since November 2013, Plaintiff did not seek treatment until
13 September 2015, almost two years later. Tr. 24-25 (citing Tr. 40, 50, 55-56, 576-
14 80). Plaintiff argues that the ALJ failed to consider Plaintiff’s testimony that she
15 did not pursue counseling because her trust was betrayed when a counselor in her
16 youth spread her private information to others. ECF No. 13 at 18 (citing Tr. 40,
17 73). However, even assuming the ALJ erred in considering this explanation as to
18 Plaintiff’s failure to seek mental health treatment, any error would be harmless
19 because the ALJ offered additional reasons, supported by substantial evidence, to
20 reject Plaintiff’s symptom claims. *See Carmickle*, 533 F.3d at 1162-63.

1 Fourth, and finally, the ALJ noted that in May 2014 Plaintiff reported to Dr.
2 Williams that she was fired from a job because of a confrontation with another
3 employee and her boss; but three months prior Plaintiff reported that she had never
4 been fired or laid off from a job because of problems getting along with other
5 people. Tr. 25 (citing Tr. 215, 386). Plaintiff generally argues that “[t]his matter is
6 ultimately of little importance to the issue of disability, and it is otherwise
7 insufficient to wholly discredit [Plaintiff].” ECF No. 13 at 19. However, the ALJ
8 properly considered prior inconsistent statements by Plaintiff in evaluating her
9 symptom claims. *See Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996).

10 Regardless, in light of the need to reconsider Dr. Williams’ opinion, as
11 discussed in detail above, the ALJ also should reconsider the credibility finding on
12 remand. Whether a proper evaluation of the medical opinions can be reconciled
13 with the ALJ’s existing finding regarding Plaintiff’s symptom claims is for the
14 Commissioner to decide in the first instance.

15 **C. New Evidence**

16 Finally, Plaintiff argues the Appeals Council erred by failing to consider
17 new medical evidence that pertained to the alleged period of disability, but was
18 submitted after the ALJ’s decision was issued. ECF No. 13 at 19-20. However, in
19 light of the need to remand for the ALJ to reexamine the medical opinion evidence,
20 it is unnecessary for the Court to address this challenge. On remand, the ALJ is

1 instructed to conduct a new sequential analysis after reconsidering the medical
2 opinion evidence pertaining to the relevant adjudicatory period.

3 **REMEDY**

4 The decision whether to remand for further proceedings or reverse and
5 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,
6 888 F.2d 599, 603 (9th Cir. 1989). An immediate award of benefits is appropriate
7 where “no useful purpose would be served by further administrative proceedings,
8 or where the record has been thoroughly developed,” *Varney v. Sec’y of Health &*
9 *Human Servs.*, 859 F.2d 1396, 1399 (9th Cir. 1988), or when the delay caused by
10 remand would be “unduly burdensome[.]” *Terry v. Sullivan*, 903 F.2d 1273, 1280
11 (9th Cir. 1990); *see also Garrison v. Colvin*, 759 F.3d 995, 1021 (noting that a
12 district court may abuse its discretion not to remand for benefits when all of these
13 conditions are met). This policy is based on the “need to expedite disability
14 claims.” *Varney*, 859 F.2d at 1401. But where there are outstanding issues that
15 must be resolved before a determination can be made, and it is not clear from the
16 record that the ALJ would be required to find a claimant disabled if all the
17 evidence were properly evaluated, remand is appropriate. *See Benecke v.*
18 *Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004); *Harman v. Apfel*, 211 F.3d 1172,
19 1179-80 (9th Cir. 2000).

20 Although Plaintiff requests a remand with a direction to award benefits, ECF
21 No. 13 at 20, the Court finds that further administrative proceedings are

1 appropriate. *See Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-04
2 (9th Cir. 2014) (remand for benefits is not appropriate when further administrative
3 proceedings would serve a useful purpose). Here, the ALJ failed to consider
4 portions of the medical opinion evidence, which calls into question whether the
5 assessed RFC, and resulting hypothetical propounded to the vocational expert, are
6 supported by substantial evidence. “Where,” as here, “there is conflicting
7 evidence, and not all essential factual issues have been resolved, a remand for an
8 award of benefits is inappropriate.” *Treichler*, 775 F.3d at 1101.

9 Instead of awarding benefits, the Court remands this case for further
10 proceedings. On remand, the ALJ must reconsider the medical opinion evidence,
11 and provide legally sufficient reasons for evaluating all of the relevant limitations
12 assessed in these opinions, supported by substantial evidence. If necessary, the
13 ALJ should order additional consultative examinations and, if necessary, take
14 additional testimony from medical experts. The ALJ should reconsider the
15 credibility analysis, and the remaining steps in the sequential evaluation analysis.
16 Finally, the ALJ should reassess Plaintiff's RFC and, if necessary, take additional
17 testimony from a vocational expert which includes all of the limitations credited by
18 the ALJ.

19 **ACCORDINGLY, IT IS HEREBY ORDERED:**

20 1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **GRANTED**,
21 **in part.**

ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR SUMMARY
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2. This case is remanded for further proceedings as outlined above.

3. Defendant's Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.

The District Court Executive is hereby directed to enter this Order and provide copies to counsel, enter judgment in favor of the Plaintiff as outlined, and **CLOSE** the file.

DATED October 12, 2018.

s/ Rosanna Malouf Peterson
 ROSANNA MALOUF PETERSON
 United States District Judge